

1 ANN-MARTHA ANDREWS
2 Nevada Bar No. 7585
3 AAndrews@LRLaw.com
4 LEWIS AND ROCA LLP
5 3993 Howard Hughes Parkway
6 Suite 600
7 Las Vegas, Nevada 89169
8 (702) 949-8200
9 (702) 949-8398 (fax)

10
11 Attorneys for Defendant
12 Aetna Life Insurance Company

13 UNITED STATES DISTRICT COURT

14 DISTRICT OF NEVADA

15 SETH LYMAN,

16 Plaintiff,

17 vs.

18 THE MEGA LIFE AND HEALTH
19 INSURANCE COMPANY, an entity
20 authorized to do business in the State of
Nevada; AETNA LIFE INSURANCE
COMPANY, an entity authorized to do
business in the State of Nevada; AETNA
STUDENT HEALTH, an entity authorized
to do business in the State of Nevada; and
DOES 1-50, inclusive,

21 Defendants.

22 Case No. 3:10-cv-00554-HDM-RAM

23
24 **STATEMENT CONCERNING
REMOVED ACTION**

25
26 Defendant Aetna Life Insurance Company (“Aetna”) submits this statement
27 concerning removal pursuant to the Court’s September 13, 2010 minute order (Dkt. 2).

28 **1. Date that the Complaint was served.**

The plaintiff served defendant Aetna Life Insurance Company through the Nevada
Department of Insurance on August 13, 2010.¹ The plaintiff served The Mega Life And

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
5510
5511
5512
5513
5514
5515
5516
5517
5518
5519
5520
5521
5522
5523
5524
5525
5526
5527
5528
5529
5530
5531
5532
5533
5534
5535
5536
5537
5538
5539
5540
5541
5542
5543
5544
5545
5546
5547
5548
5549
55410
55411
55412
55413
55414
55415
55416
55417
55418
55419
55420
55421
55422
55423
55424
55425
55426
55427
55428
55429
55430
55431
55432
55433
55434
55435
55436
55437
55438
55439
55440
55441
55442
55443
55444
55445
55446
55447
55448
55449
55450
55451
55452
55453
55454
55455
55456
55457
55458
55459
55460
55461
55462
55463
55464
55465
55466
55467
55468
55469
55470
55471
55472
55473
55474
55475
55476
55477
55478
55479
55480
55481
55482
55483
55484
55485
55486
55487
55488
55489
55490
55491
55492
55493
55494
55495
55496
55497
55498
55499
554100
554101
554102
554103
554104
554105
554106
554107
554108
554109
554110
554111
554112
554113
554114
554115
554116
554117
554118
554119
554120
554121
554122
554123
554124
554125
554126
554127
554128
554129
554130
554131
554132
554133
554134
554135
554136
554137
554138
554139
554140
554141
554142
554143
554144
554145
554146
554147
554148
554149
554150
554151
554152
554153
554154
554155
554156
554157
554158
554159
554160
554161
554162
554163
554164
554165
554166
554167
554168
554169
554170
554171
554172
554173
554174
554175
554176
554177
554178
554179
554180
554181
554182
554183
554184
554185
554186
554187
554188
554189
554190
554191
554192
554193
554194
554195
554196
554197
554198
554199
554200
554201
554202
554203
554204
554205
554206
554207
554208
554209
554210
554211
554212
554213
554214
554215
554216
554217
554218
554219
554220
554221
554222
554223
554224
554225
554226
554227
554228
554229
5542210
5542211
5542212
5542213
5542214
5542215
5542216
5542217
5542218
5542219
55422100
55422101
55422102
55422103
55422104
55422105
55422106
55422107
55422108
55422109
55422110
55422111
55422112
55422113
55422114
55422115
55422116
55422117
55422118
55422119
55422120
55422121
55422122
55422123
55422124
55422125
55422126
55422127
55422128
55422129
554221210
554221211
554221212
554221213
554221214
554221215
554221216
554221217
554221218
554221219
554221220
554221221
554221222
554221223
554221224
554221225
554221226
554221227
554221228
554221229
5542212210
5542212211
5542212212
5542212213
5542212214
5542212215
5542212216
5542212217
5542212218
5542212219
5542212220
5542212221
5542212222
5542212223
5542212224
5542212225
5542212226
5542212227
5542212228
5542212229
55422122210
55422122211
55422122212
55422122213
55422122214
55422122215
55422122216
55422122217
55422122218
55422122219
55422122220
55422122221
55422122222
55422122223
55422122224
55422122225
55422122226
55422122227
55422122228
55422122229
554221222210
554221222211
554221222212
554221222213
554221222214
554221222215
554221222216
554221222217
554221222218
554221222219
554221222220
554221222221
554221222222
554221222223
554221222224
554221222225
554221222226
554221222227
554221222228
554221222229
5542212222210
5542212222211
5542212222212
5542212222213
5542212222214
5542212222215
5542212222216
5542212222217
5542212222218
5542212222219
5542212222220
5542212222221
5542212222222
5542212222223
5542212222224
5542212222225
5542212222226
5542212222227
5542212222228
5542212222229
55422122222210
55422122222211
55422122222212
55422122222213
55422122222214
55422122222215
55422122222216
55422122222217
55422122222218
55422122222219
55422122222220
55422122222221
55422122222222
55422122222223
55422122222224
55422122222225
55422122222226
55422122222227
55422122222228
55422122222229
554221222222210
554221222222211
554221222222212
554221222222213
554221222222214
554221222222215
554221222222216
554221222222217
554221222222218
554221222222219
554221222222220
554221222222221
554221222222222
554221222222223
554221222222224
554221222222225
554221222222226
554221222222227
554221222222228
554221222222229
5542212222222210
5542212222222211
5542212222222212
5542212222222213
5542212222222214
5542212222222215
5542212222222216
5542212222222217
5542212222222218
5542212222222219
5542212222222220
5542212222222221
5542212222222222
5542212222222223
5542212222222224
5542212222222225
5542212222222226
5542212222222227
5542212222222228
5542212222222229
55422122222222210
55422122222222211
55422122222222212
55422122222222213
55422122222222214
55422122222222215
55422122222222216
55422122222222217
55422122222222218
55422122222222219
55422122222222220
55422122222222221
55422122222222222
55422122222222223
55422122222222224
55422122222222225
55422122222222226
55422122222222227
55422122222222228
55422122222222229
554221222222222210
554221222222222211
554221222222222212
554221222222222213
554221222222222214
554221222222222215
554221222222222216
554221222222222217
554221222222222218
554221222222222219
554221222222222220
554221222222222221
554221222222222222
554221222222222223
554221222222222224
554221222222222225
554221222222222226
554221222222222227
554221222222222228
554221222222222229
5542212222222222210
5542212222222222211
5542212222222222212
5542212222222222213
5542212222222222214
5542212222222222215
5542212222222222216
5542212222222222217
5542212222222222218
5542212222222222219
5542212222222222220
5542212222222222221
5542212222222222222
5542212222222222223
5542212222222222224
5542212222222222225
5542212222222222226
5542212222222222227
5542212222222222228
5542212222222222229
55422122222222222210
55422122222222222211
55422122222222222212
55422122222222222213
55422122222222222214
55422122222222222215
55422122222222222216
55422122222222222217
55422122222222222218
55422122222222222219
55422122222222222220
55422122222222222221
55422122222222222222
55422122222222222223
55422122222222222224
55422122222222222225
55422122222222222226
55422122222222222227
55422122222222222228
55422122222222222229
554221222222222222210
554221222222222222211
554221222222222222212
554221222222222222213
554221222222222222214
554221222222222222215
554221222222222222216
554221222222222222217
554221222222222222218
554221222222222222219
554221222222222222220
554221222222222222221
554221222222222222222
554221222222222222223
554221222222222222224
554221222222222222225
554221222222222222226
554221222222222222227
554221222222222222228
554221222222222222229
5542212222222222222210
5542212222222222222211
5542212222222222222212
5542212222222222222213
5542212222222222222214
5542212222222222222215
5542212222222222222216
5542212222222222222217
5542212222222222222218
5542212222222222222219
5542212222222222222220
5542212222222222222221
5542212222222222222222
5542212222222222222223
5542212222222222222224
5542212222222222222225
5542212222222222222226
5542212222222222222227
5542212222222222222228
5542212222222222222229
55422122222222222222210
55422122222222222222211
55422122222222222222212
55422122222222222222213
55422122222222222222214
55422122222222222222215
55422122222222222222216
55422122222222222222217
55422122222222222222218
55422122222222222222219
55422122222222222222220
55422122222222222222221
55422122222222222222222
55422122222222222222223
55422122222222222222224
55422122222222222222225
55422122222222222222226
55422122222222222222227
55422122222222222222228
55422122222222222222229
554221222222222222222210
554221222222222222222211
554221222222222222222212
554221222222222222222213
554221222222222222222214
55

1 Health Insurance Company (“MegaLife”) through the Nevada Department of Insurance on
 2 July 15, 2010. The plaintiff later voluntarily dismissed MegaLife on September 24, 2010.
 3 (Dkt. 6.)

4 **2. Date that the Summons was served.**

5 The plaintiff served defendant Aetna Life Insurance Company through the Nevada
 6 Department of Insurance on August 13, 2010. The plaintiff served former defendant
 7 MegaLife through the Nevada Department of Insurance on July 15, 2010.

8 **3. Citizenship and summary of amount in controversy.**

9 The parties are diverse. Plaintiff Lyman alleges that he is a resident of Washoe
 10 County, Nevada. (Complaint ¶ 1.) Defendant Aetna is a Connecticut corporation, with its
 11 principal place of business in Connecticut. Former defendant MegaLife is an Oklahoma
 12 corporation with its principal place of business in Texas.

13 The amount in controversy exceeds this Court’s jurisdictional minimum. Taken
 14 together, the plaintiff’s allegations and demands establish that the amount in controversy
 15 exceeds \$75,000, exclusive of interest and costs:

16 *Alleged Contract Damages.* The plaintiff alleges breach of contract and seeks
 17 damages for medical expenses incurred. (Complaint at ¶ 14, 20; Prayer at ¶ 3.) The
 18 medical expenses at issue are at least \$22,368.

19 *Alleged Tort Damages.* The plaintiff alleges that Aetna breached a fiduciary duty
 20 and acted in bad faith by “engaging in misconduct” where a “special element of reliance or
 21 fiduciary duty existed.” (Complaint ¶¶ 37, 26-27.) For his tort damages, he seeks, among
 22 other things, “damages based on lost wages, damages based upon inability to pay medical
 23 bills and damages for pain and suffering.” (Prayer at ¶ 3.) These damages are alleged to
 24 exceed \$10,000. (Complaint ¶ 28.)

25 *Alleged Statutory Damages.* In addition, Lyman alleges that Aetna violated
 26 statutory duties by engaging in unfair trade practices. He alleges damages in excess of
 27 \$10,000 on these violations. (Complaint at ¶ 32.)

28 *Alleged Punitive Damages.* Finally, Lyman alleges that he is entitled to recover

1 punitive damages. (See Complaint at ¶¶ 30-33, 29.) He alleges that these damages are “in
 2 excess of” \$10,000. (Complaint at ¶¶ 29, 33, Prayer at ¶ 2.)

3 In *BMW of North America v. Gore*, 517 U.S. 559, 574-75 (1996), the United States
 4 Supreme Court set forth guideposts to review punitive damage awards for excessiveness:
 5 (1) the degree of reprehensibility; (2) the difference between this remedy and the civil
 6 penalties authorized or imposed in comparable cases; and (3) the disparity between the
 7 harm suffered and the punitive damage award.

8 *Degree of Reprehensibility.* The Supreme Court set forth the factors to be
 9 considered in determining “reprehensibility” in *State Farm Mut. Auto. Ins. Co. v.*
 10 *Campbell*, 123 S.Ct. 1513, 1519-20 (2003). Those factors are whether (a) the harm caused
 11 was physical, as opposed to economic; (b) the conduct evidenced an indifference to or a
 12 reckless disregard of the health or safety of others; (c) the target of the conduct was
 13 financially vulnerable; (d) the conduct involved repeated actions, rather than an isolated
 14 incident; and (e) the harm was the result of intentional malice, trickery, or deceit, rather
 15 than a mere accident. *Id.* at 419, citing *Gore*, 517 U.S. at 576-77. By implication, the
 16 plaintiff has here invoked at least factors (a), (c), and (e).

17 *Comparison with civil penalties for similar conduct.* The relevant benchmarks in
 18 the present case are the penalty provisions of the Nevada insurance laws. If an insurance
 19 company engages in an unfair or deceptive act or practice, the Insurance Commissioner
 20 may impose a civil penalty of \$5,000 for each violation if the insurer knew or should have
 21 known that it was engaging in an unfair or deceptive act or practice. NRS
 22 § 686A.183(1)(a).

23 *Ratio of punitive damages to compensatory damages.* The Supreme Court has held
 24 that “in practice, few awards exceeding a single-digit ratio between punitive and
 25 compensatory damages, to a significant degree, will satisfy due process.” *Campbell*, 538
 26 U.S. at 425. *Campbell* recognized an inverse relationship between an award of
 27 compensatory damages and the permissible amount of punitive damages: “When
 28 compensatory damages are substantial, then a lesser ratio, perhaps only equal to

1 compensatory damages, can reach the outermost limit of the due process guarantee.”
 2 *Campbell*, 538 U.S. at 425. The Court has stated, however, that “an award of more than
 3 four times the amount of compensatory damages might be close to the line of
 4 constitutional impropriety.” *Campbell*, 538 U.S. at 425.

5 *Other Nevada Punitive Damage Awards.* The Court may also consider punitive
 6 damage awards rendered in other, similar cases. *See, e.g., Richmond v. Allstate Ins. Co.*,
 7 897 F. Supp. 447, 450 (S.D. Cal. 1995). Because the facts of each case are different, the
 8 amount of the verdict rendered in one case is not necessarily indicative of what will or
 9 might occur in this case. But the case law shows that even where the contract damages are
 10 minimal, Nevada juries have awarded significant bad faith and punitive damages. *See,*
 11 *e. g., Albert H. Wohlers and Co. v. Bartgis*, 114 Nev. 1249, 969 P.2d 949 (1998) (jury
 12 awarded \$7.5 million in punitive damages; court approved punitive damages of \$3.75
 13 million); *Republic Ins. Co. v. Hires*, 107 Nev. 317, 810 P.2d 790 (1991) (jury awarded
 14 \$22.5 million in punitive damages; court approved punitive damages of \$5 million);
 15 *Guaranty Nat'l Ins. Co. v. Potter*, 112 Nev. 199, 912 P.2d 267 (1996) (jury awarded
 16 \$1 million in punitive damages; court approved punitive damages of \$250,000); *United*
 17 *Fire Ins. Co. v. McClelland*, 105 Nev. 504, 780 P.2d 193 (1989) (award of \$500,000 in
 18 punitive damages and \$143,000 in compensatory damages); *Powers v. USAA Insurance*,
 19 114 Nev. 690, 726, 962 P.2d 596, 618 at n. 8 (1997) (awarding \$397,000 in general
 20 damages, \$5 million punitive damages); *General Builders v. GAIC*, 113 Nev. 346, 350,
 21 934 P.2d 257, 260 (awarding \$947,566 in general damages and \$2.5 million in punitive
 22 damages); *Industrial Indemnity Insurance v. Helms*, CV A 8056 HDM, *unpublished*
 23 *disposition* (D. Nev. 1994) (awarding \$8.5 million in general damages and \$30 million in
 24 punitive damages); *Barney v. Workams Auto Insurance*, CV 96-05481 (Second Judicial
 25 District Court 5/7/2001) (awarding \$194,382 in compensatory damages and \$500,000 in
 26 punitive damages) (awarding \$194,382 in compensatory damages and \$500,000 in punitive
 27 damages); *Crimmins v. American National Insurance Co.* (Second Judicial District Court
 28 5/27/03) (awarding \$983,000 in compensatory damages and \$650,000 in punitive

1 damages); *Merrick v. Paul Revere Life Insurance Co.*, CV-S-00731-JCM-RJJ (D. Nev.
 2 2004) (awarding \$1,147,355.00 for past unpaid benefits, \$500,000.00 for mental and
 3 emotional distress, \$2,000,000.00 in punitive damages from Paul Revere, and
 4 \$8,000,000.00 in punitive damages from UnumProvident).²

5 Claim For Attorneys' Fees. Lyman alleges that he is entitled to recover attorneys'
 6 fees as an element of damages. (See Prayer at ¶ 4.)

7 Conclusion. Taken together, the plaintiff's allegations and demands establish that
 8 the amount in controversy exceeds \$75,000, exclusive of interest and costs. In addition to
 9 the \$22,368 in benefits at issue, the plaintiff has alleged tort damages "in excess of"
 10 \$10,000, statutory damages "in excess of" \$10,000, punitive damages "in excess of"
 11 \$10,000, plus attorneys' fees. Based on a typical 33 percent attorneys' contingent fee, this
 12 equals \$69,649 using the *minimum* damage values stated in the complaint—and the
 13 plaintiff's complaint indicates that their damages are "in excess" of the stated amounts.
 14 Alternatively, it is more likely than not that the jurisdictional minimum is met because the
 15 ratio of the compensatory damages alleged (\$42,368) to punitive damages need be only
 16 1.3:1 to meet it (and this calculation includes no value for the attorneys' fees plaintiffs
 17 expressly seek).

18 **4. The reason for removal if filed more than 30 days after service.**

19 Not applicable – the removal was filed within 30 days of service on both
 20 defendants.

21 **5. The reason for removal if filed more than one year after the action was
 22 commenced in state court.**

23 Not applicable – the removal was filed within one year of commencement of the
 24 state court action.

25

26

27

28

²See Notice of Removal (Dkt. 1) at Exhibit A, for trial court cases, unpublished dispositions, Trial Reporter synopses, and one website printout.)

6. Defendants served who did not formally join.

Undersigned counsel avows that pursuant to a discussion with Mega Life's counsel, Mega Life intended to join in the removal; however, the plaintiff voluntarily dismissed MegaLife as an improper party, shortly after Aetna removed.

The defendants are serving by mail a copy of the Minute Order concerning removal on the plaintiffs' counsel, along with this statement responding to the Minute Order.

RESPECTFULLY SUBMITTED this 30th day of September, 2010.

LEWIS AND ROCA LLP

BY: /s/ Ann-Martha Andrews
ANN-MARTHA ANDREWS
Nevada Bar No. 7585
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169
Attorneys for Defendant
Aetna Life Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

Steven J. Klearman, Esq.
Steven J. Klearman & Associates
437 West Plumb Lane
Reno, Nevada 89509
Attorneys for Plaintiff

/s/ Roxann Draper
LEWIS AND ROCA LLP